contract was entered into. This would seem to be immaterial, since the statute was inoperative until the President's proclamation, which was after the contract was entered into but before its completion. If by this argument it is meant that both parties having known of the enactment at the time the arrangement was made, the vendor should thereby be deemed to have assumed the risk of procuring the Shipping Board's consent to a sale in case the statute should be called into effect, and agreed to pay the commissions in any event, the contention is unsound. This argument was made in an English case where the parties entered into an agreement for the sale of a quantity of aluminum to be shipped by the seller to a foreign company, at a time when to the knowledge of both parties there was a government prohibition of the export of aluminum except on license of the British government. It was held that the law would not impose an absolute obligation to do what the law forbade, and that the contract was subject to an implied condition that an export license could be obtained. *Anglo-Russian Traders* v. *John Butt & Co.*, [1917] 2 K. B. 679. The reasoning would apply equally well to the instant case. For a full discussion of many cases dealing with war-time impossibility of performance, see 18 MICH. L. REV. 589. See also 35 LAW Q. REV. 84; 38 CANADIAN LAW TIMES 86.

CHARITIES—APPLICATION "CY PRÈS."—Testator devised specific real property, including a hotel, in trust to sell part of the property, and operate the hotel in testator's name, and from the proceeds and profits raise a sinking fund for the permanent operation and improvement of the hotel, and thereafter to apply the funds to specific charities. After testator's death a modern hotel was erected in the same city and because of its competition testator's hotel could not be maintained and operated in the future at a profit or so as to provide an income for the charities designated. Plaintiff, heir at law of testator, claims that, in view of the changed conditions and circumstances, the provision in the will for the charities must fail, and therefore prays that a decree be entered vesting the title to the property in him. *Held*, the intention to give the funds to the charities specified will be given effect, though the mode prescribed cannot be followed. *Hodge* v. *Wellman* (Ia., 1920), 179 N. W. 534.

The doctrine of the *cy pres* application of charitable trusts, as a branch of the general equitable powers of a court of chancery, has been extensively recognized in some form throughout the United States. On the other hand, the doctrine has been wholly rejected in some states. See *Crim* v. *Williamson*, 180 Ala. 179; *Mars* v. *Gilbert*, 93 S. C. 455. Courts of equity favor gifts to charity, and in the jurisdictions which have adopted the *cy pres* doctrine the courts have held that if the mode pointed out in the will for carrying the gift into effect fails the court will provide another mode by which it may take effect. See *Jansen* v. *Godair* (Ill., 1920), 127 N. E. 97; *Adams* v. *Page*, 76 N. H. 96. In the latter case, where the testator's plan to provide a hospital for those living in a certain community had become impracticable by reason of the establishment of a similar institution by others, the court

carried out his intention by ordering that the trust property be used for the benefit of the hospital already in operation. If, then, a court of equity, by the application of *cy pres* doctrine, will order the trust property to be used for a charity other than the one specified by the testator because it would be impracticable to carry out his specific intention, *a fortiori* should they apply the *cy pres* doctrine when the impracticability arises merely in the mode of the administration of the trust property. As pointed out in the principal case, where the essential thing in the testator's mind was the mode prescribed for carrying out his wishes, and not a general intent to devote the funds to charity, the doctrine of *cy pres* cannot apply if the particular mode prescribed by the testator is impracticable or illegal. In the instant case definite charities were created, but the particular mode by which they were to be effectuated had become impossible. By substituting another mode the substantial intention of the testator was not made to depend upon his formal intention. The doctrine *cy pres* adopted to this extent is in harmony with the equitable rule that a liberal construction is to be given to charitable donations to accomplish the general charitable intent of the donor. The decision in the principal case is sound and would no doubt be followed in all jurisdictions recognizing, in any form, the *cy pres* doctrine.

CONSTITUTIONAL LAW—FIXING PRICES FOR SALE OF NECESSARIES UNDER LEVER ACT IS DEPRIVING OF PROPERTY WITHOUT DUE PROCESS OF LAW.—A demurrer was filed to a count of an indictment charging defendants with violating the provision of the Lever Act making it unlawful to make any unjust charges in dealing with necessaries, on the ground that the provision contravenes the Fifth Amendment to the Federal Constitution. *Held,* that the provision takes property without due process of law, and is therefore unconstitutional. *United States* v. *Bernstein* (Neb., D. C., 1920), 267 Fed. 296.

The argument of the court may be briefly summarized as follows: In the first place, the validity of war measures, however desirable, must stand the test of constitutional limitations, and cannot be sustained if rights guaranteed by the fundamental law are infringed thereby. Secondly, the value of an individual citizen's property right, in such necessaries as he deals in, is derived almost entirely from his right to sell freely, according to the course of trade and commerce. An incident of such trade and commerce between individuals is the fixing of a price. Finally, a law which makes it a crime for a man to sell his private property, not clothed with a public interest, for the best price he can get in the ordinary course of trade and commerce, cannot be sustained, while the Constitution forbids the taking of private property for public use without just compensation, and insures that no person shall be deprived of his property without due process of law. Obviously, the court overlooked the only real point in the case when it assumed with delightful *naiveté* that it was dealing with property wholly unaffected with any public interest. If necessaries of life are not "clothed with a public interest" the argument is unimpeachable but too elementary to necessitate any discussion. If, on the other hand, the business of dealing